

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CASSANDRA G., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CASSANDRA G.,

Defendant and Appellant.

D074226

(Super. Ct. No. J241162)

APPEAL from a judgment of the Superior Court of San Diego County,
Browder A. Willis, Aaron H. Katz, Judges. Affirmed in part, remanded with directions in
part.

Pauline E. Villanueva, under appointment by the Court of Appeal, for Defendant
and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Michael P. Pulos, Kathryn A.

Kirschbaum and Amanda Lloyd, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

Following a contested adjudication hearing, the trial court made true findings on a petition filed against Cassandra G. under Welfare and Institutions Code section 602. The court found true one count of committing a battery on school property (Pen. Code,¹ § 243.2, subd. (a)(1)).

At the disposition hearing, the trial court found Cassandra to be a ward of the court and placed her on probation on various terms and conditions, including that she "report all law enforcement contacts to the Probation Officer within three calendar days."

Cassandra appeals, contending that there is insufficient evidence to support the trial court's finding that she did not act in self-defense, that the court improperly shifted the burden of proof to her on the issue of self-defense, and that the court abused its discretion in excluding evidence of the victim's subsequent suspension from school as a result of his role in the incident. Cassandra further contends that even if this court concludes that errors with respect to shifting the burden of proof and excluding evidence of the victim's suspension would not independently require reversal, the cumulative effect of these errors does require reversal. Finally, Cassandra challenges the probation

¹ Further statutory references are to the Penal Code unless otherwise indicated.

condition that requires her to report all contacts with law enforcement within three days on the ground that the condition is unconstitutionally vague.

We conclude that Cassandra's first three contentions are without merit, and thus that her cumulative error argument is also without merit. However, we agree with Cassandra that the challenged probation condition is impermissibly vague. We therefore remand the matter to the trial court to allow it to modify or strike the challenged condition.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Factual background*

On November 16, 2017, Cassandra entered a history classroom at her high school while a class in which she was not enrolled was in session.

A.R. was sitting at his desk working on a project when Cassandra entered the classroom. When A.R. noticed Cassandra in the room, he "roasted" her.²

Cassandra approached A.R.'s desk. A.R. stood up and told Cassandra to leave, given that she was not supposed to be in that classroom. A.R.'s hands were at his sides. At that point, Cassandra punched A.R. in the chest. A.R. continued to tell Cassandra that she should leave another three or four times. Cassandra then punched A.R. in the chest again. After Cassandra's second punch, A.R. punched Cassandra. He testified that he did

² A.R. explained that "roasting" means "insulting someone in a joking way."

so to "get her off" of him. A.R. told Cassandra, "I'm not playing," and he "socked her two more times."

Cassandra started running away, and then took off one of her shoes and tried to throw it at A.R. At that point, the coach who was watching the classroom tried to separate A.R. and Cassandra. The coach told A.R. to go to the school office.

A.R. testified that he had not tried to hit Cassandra, threaten her, start a fight with her, or egg her on prior to her first punch.

E.G., a classmate of A.R.'s, was sitting behind him, approximately five feet away, when the incident occurred. E.G. testified that Cassandra entered the classroom and was "saying negative comments just out loud, not in general to anybody." E.G. confirmed that A.R. eventually said something "negative" to Cassandra, who then approached A.R. and either hit or pushed him. E.G. was certain that "Cassandra initiated" the physical altercation. E.G. further testified that A.R. had not tried to punch or push Cassandra, and that A.R. had not "tr[ie]d to start a fight" with Cassandra.

The coach testified that he saw Cassandra enter the classroom and "start[] messing with [A.R.]." The coach testified that A.R. told Cassandra to leave him alone and then Cassandra hit A.R. The coach confirmed that after Cassandra hit A.R., she turned to run and A.R. hit her in the back twice. The coach testified that A.R. did not spit on Cassandra, that he had not made any threatening gestures or movements, and that he had not done anything else "to cause Cassandra to punch [A.R.]"

Two videos of a portion of the incident were played in court. Both videos begin at the point when Cassandra struck A.R. the second time and end after Cassandra tried to throw her shoe at A.R.

Cassandra testified on her own behalf. She testified that after A.R. "said something" to her, she "told him to shut up." According to Cassandra, A.R. then got up, walked toward her, and "got in [her] face." Cassandra also testified that A.R. had spit on her while he was telling her to "get out of the classroom." A.R.'s actions made her feel "grossed out and threatened," and she "felt like he was going to hit [her]." Cassandra said that when A.R. refused to get out of her face, she got up and "mushed him in the chest."³ After that, according to Cassandra, she turned and walked away, but A.R. swung at her four times and hit her in the back of her head. Cassandra stated that when she said on a Snapchat video that she had "handled what [she] had to do," she was referring to having "to defend [herself]."

On cross-examination, Cassandra admitted that she had thrown the first punch. Cassandra also admitted that she had not told anyone else that A.R. had spit on her first, and that she had not included that information in her signed statement about the incident.

B. Procedural background

On April 6, 2018, the San Diego County District Attorney's Office filed a juvenile wardship petition, pursuant to Welfare and Institutions Code section 602, alleging that

³ Cassandra testified that by using the word "mushed," she meant that she had "sock[ed]" him.

Cassandra had committed a battery on school property, in violation of section 243.2, subdivision (a)(1)).

After a contested adjudication hearing, the court sustained the allegation.

At the disposition hearing, the court declared Cassandra a ward of the court and placed her on probation, subject to the terms and conditions recommended by the probation officer in a social study report. One of the probation conditions requires that Cassandra "follow the rules and instructions of the Probation Officer, and report all law enforcement contacts to the Probation Officer within three calendar days."

Cassandra filed a timely notice of appeal.

III.

DISCUSSION

A. *There is substantial evidence to support the trial court's finding that Cassandra did not act in self-defense*

Cassandra contends that there is insufficient evidence to establish beyond a reasonable doubt that she did not act in self-defense when she hit A.R. We disagree.

"In reviewing a sufficiency of evidence claim, the reviewing court's role is a limited one. ' "The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]" ' [Citations.] [¶] ' "Although we must ensure the evidence is reasonable,

credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]" ' ' ' (*People v. Smith* (2005) 37 Cal.4th 733, 738–739.)

" 'Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.' [Citation.] Unless it describes facts or events that are physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction. [Citation.]" (*People v. Elliott* (2012) 53 Cal.4th 535, 585.)

The same standard of review regarding sufficiency of the evidence claims applies in both juvenile and adult criminal proceedings. (*In re J.R.* (2018) 22 Cal.App.5th 805, 814.)

Cassandra was convicted of committing a battery on school grounds. (§ 243.2.) "A battery is any willful and unlawful use of force or violence upon the person of another." (§ 242.) "Any harmful or offensive touching constitutes an unlawful use of force or violence." (*People v. Martinez* (1970) 3 Cal.App.3d 886, 889.)

Self-defense provides a legal justification for the commission of a battery. (See *People v. Mayes* (1968) 262 Cal.App.2d 195, 198.) " 'To justify an act of self-defense . . . , the defendant must have an honest *and reasonable* belief that bodily injury

is about to be inflicted on him. [Citation.]" [Citation.] The threat of bodily injury must be imminent [citation], and ' . . . any right of self-defense is limited to the use of such force as is reasonable under the circumstances.' " (*People v. Minifie* (1996) 13 Cal.4th 1055, 1064–1065.) "[A]lthough the test is objective, reasonableness is determined from the point of view of a reasonable person in the defendant's position." (*Id.* at p. 1065.) The trier of fact "must consider all the facts and circumstances it might ' "expect[] to operate on [defendant's] mind" [Citation.]" " (*Ibid.*)

The juvenile court found that Cassandra had not acted in self-defense when she punched A.R. The record discloses substantial evidence to support this finding. Indeed, the vast majority of the evidence supports a finding that Cassandra was the one who initiated physical contact by punching A.R. Specifically, Cassandra entered a classroom in which she was not supposed to be, and approached A.R. while he remained at the table where he was seated. Although A.R. "roasted" Cassandra verbally, the evidence demonstrated that he made no threatening statements. Further, multiple witnesses testified that A.R. had his hands at his sides when he spoke to Cassandra, and that he made no threatening gestures and did not otherwise indicate that he was going to strike or touch her. In response to A.R. telling Cassandra to leave him alone and to leave the classroom where she did not belong, Cassandra struck A.R. twice.

Based on these facts, a reasonable person in Cassandra's position would not have believed that she was in imminent danger of bodily injury or of suffering a battery, herself. Being the target of insulting words is not sufficient to justify a battery on

another person. (See, e.g., CALCRIM No. 917 ["Words, no matter how offensive, and acts that are not threatening, are not enough to justify an assault or battery"].)

It is of no consequence that A.R. subsequently responded to Cassandra's two punches by striking her in the back several times. Cassandra suggests that she "tried to run away, only to have [A.R.] chase her and strike her multiple times" She also highlights that video of the incident "only underscores the disproportionate nature of [A.R.'s] response." However, a claim of self-defense "may not be invoked by a defendant who, through [her] own wrongful conduct (e.g., the initiation of a physical assault or the commission of a felony), has created circumstances under which [her] adversary's attack or pursuit is legally justified." (*In re Christian S.* (1994) 7 Cal.4th 768, 773, fn. 1.) Thus, the fact that A.R. responded to Cassandra's physical violence with additional and possibly disproportionate physical violence directed toward her is not relevant to whether Cassandra acted in self-defense when she first punched A.R. Cassandra committed a battery on A.R. *before* A.R. struck Cassandra, and the evidence demonstrates that a reasonable person in her position at the time she struck A.R. would not have believed that she was in imminent danger of being hurt by A.R.

B. *The record does not support Cassandra's contention that the trial court improperly shifted the burden of proof to her regarding self-defense*

Cassandra asserts that the trial court improperly shifted the burden of proof to her to prove that she acted in self-defense rather than requiring that the *prosecution* prove beyond a reasonable doubt that she did not act in self-defense. Cassandra cites to two statements that the court made when it was discussing the self-defense issue that could be

understood to suggest that the court was saying that there was not substantial evidence of self-defense. The court made one of these comments after Cassandra's Welfare and Institutions Code section 701.1 motion for dismissal, stating, "Based on the state of the evidence at this time, I do not find substantial evidence of self-defense." Later, at the conclusion of the hearing, while discussing the evidence and what testimony the court found credible, the court said, "There wasn't substantial evidence of credible evidence [*sic*] as to a need to punch or mush or strike [A.R.]"

Taking these statements in isolation could lead one to conclude that the trial court was under a misimpression as to which party bore the burden of proof regarding self-defense. However, the record discloses that the court made a number of other statements that demonstrate that the court was well aware that the prosecution bore the burden of establishing beyond a reasonable doubt that Cassandra had not acted in self-defense when she struck A.R., and that the court in fact held the prosecution to that burden. For example, Cassandra fails to acknowledge that the court also said the following in making its final ruling: "I do find based on the evidence that *the People* have proven beyond a reasonable doubt that the minor did not act in willful self-defense." (Italics added.) This statement makes it clear that the court understood that it was the People's burden to demonstrate the absence of self-defense and that the court applied the correct standard of proof.

In addition, the trial court acknowledged at various points during the hearing that the prosecution bore the burden to prove that Cassandra had not acted in self-defense. At the beginning of the hearing, the court addressed the self-defense theory and stated that

the People had the burden with respect to proving the absence of self-defense. Later, in discussing a "motion for th[e] court to consider [an] instruction on self-defense," the court granted the motion and said, "And the People have the burden as it relates to that as well."

Although the court made statements that appear to state the burden incorrectly, such as when the court stated that it did not find "substantial evidence of credible evidence [*sic*] as to a need to punch or mush or strike [A.R.]," given that the court clearly was aware that the People bore the burden to prove beyond a reasonable doubt that Cassandra had not acted in self-defense, these statements appear to reflect the court's difficulty in articulating how to describe the state of the evidence needed to prove a negative, and not the court's difficulty in applying the appropriate burden proof. The full context of the court's statements makes clear that the court found the prosecution's witnesses credible, and found the version of events provided by those witnesses to be believable and consistent with each other, while the court did not find Cassandra's testimony credible, and rejected her version of events, which was inconsistent with the testimony of the other witnesses. After explaining its credibility determinations, the court repeated that the People had "proven their case beyond a reasonable doubt."

In sum, a review of the record demonstrates that the trial court was aware that the People bore the burden of proving beyond a reasonable doubt that Cassandra had not acted in self-defense, and that the court properly applied the correct standard of proof. In doing so, the court concluded that Cassandra had not, in fact, acted in self-defense when she punched A.R.

C. *The trial court's ruling to exclude evidence of A.R.'s suspension from school for his part in the incident did not deny Cassandra her constitutional right to present a defense*

Cassandra contends that the trial court denied her constitutional right to present a complete defense by excluding evidence that A.R. was suspended by the school as a result of the incident.

1. *Additional background*

The prosecutor moved in limine to exclude any evidence of A.R.'s suspension from school as irrelevant. Cassandra argued that A.R.'s suspension was relevant and probative as to whether her self-defense claim was reasonable. The prosecutor responded that any third-party decision regarding a consequence for A.R.'s conduct was irrelevant to a determination as to whether Cassandra had acted in self-defense.

The trial court granted the prosecutor's motion. In doing so, the court mentioned that self-defense is a legal theory, that there are elements that must be met, and that the prosecution has the burden of proving those elements. The court concluded that a "finding by an administrative body subsequent to the event" would be unhelpful to the court because the court does not know what standards are utilized by the administrative body, and because the court could not "see where any subsequent finding would prove or disprove any particular facts in this case."

2. *Analysis*

Only relevant evidence is admissible. (Evid. Code, § 350.) " 'Relevant evidence is evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." ' " (*People v. Hardy* (2018) 5 Cal.5th

56, 87.) " 'In general, the trial court is vested with wide discretion in determining relevance,' " and a trial court's ruling with respect to relevance " 'will not be overturned on appeal absent an abuse of that discretion.' " (*Ibid.*)

The juvenile court did not abuse its discretion in excluding as irrelevant any evidence concerning the fact that A.R. was suspended from school after the incident. As the trial court observed, whether A.R. was suspended from school after the incident would not prove or disprove any of the material facts in this case.

Cassandra appears to contend that A.R.'s suspension was relevant to show the " 'character of the victim' " in order to further demonstrate that " 'the victim was the aggressor.' " She suggests that A.R.'s "suspension was relevant to show that his own actions were not simply one of self-defense, as he implied in his testimony." However, evidence of A.R.'s conduct—i.e., the actions that he took with respect to Cassandra—was admitted during the proceeding. In fact, A.R. admitted that he punched Cassandra after she started to run away. This was corroborated by the testimony of the other witnesses. The videos that were shown also provided evidence of A.R.'s conduct. A.R.'s conduct was potentially relevant to his character for violence, and that evidence was admitted. Whether an administrative body suspended A.R. as a result of his conduct was simply not relevant to the issues before the court.

We reject Cassandra's contention that the trial court's evidentiary ruling somehow denied Cassandra her constitutional right to present a complete defense. "As a general matter, the '[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant's right to present a defense.' " (*People v. Fudge* (1994) 7 Cal.4th

1075, 1102–1103.) "Although a defendant is constitutionally entitled to present 'a complete defense' [citation], that right does not encompass the ability to present evidence unfettered by evidentiary rules [citation]." (*People v. Shorts* (2017) 9 Cal.App.5th 350, 358.)

It is clear that the trial court's application of the normal rules of evidence did not deny Cassandra her constitutional right to present a complete defense. As already mentioned, there was abundant evidence elicited regarding A.R.'s striking Cassandra during the incident. Cassandra's counsel was permitted to cross-examine A.R. and the other prosecution witnesses regarding his conduct throughout the events in question. In light of all of the evidence of A.R.'s conduct that was admitted, the court's exclusion of evidence of A.R.'s subsequent suspension by the school did not undermine Cassandra's constitutional right to present a defense.

D. There is no cumulative error

Cassandra contends that the cumulative effect of two of the errors that she alleges—the alleged evidentiary error and the alleged burden shifting by the court—requires reversal. "Under the 'cumulative error' doctrine, errors that are individually harmless may nevertheless have a cumulative effect that is prejudicial." (*In re Avena* (1996) 12 Cal.4th 694, 772, fn. 32.) We have concluded that neither the claim that the trial court improperly shifted the burden to Cassandra to prove that she acted in self-defense nor the claim that the trial court erred in excluding evidence of the victim's suspension, has merit. As a result, there are no errors for which the cumulative effect would require reversal of the judgment.

E. *The probation condition requiring Cassandra to report all law enforcement contacts to her probation officer is unconstitutionally vague and requires modification*

Cassandra challenges a probation condition that requires her to "report all law enforcement contacts to the Probation Officer within three calendar days" (the law enforcement contact condition). The record does not establish that Cassandra objected to the imposition of this condition in the trial court. The People do not assert that Cassandra has forfeited her challenge to the condition but instead contend that the law enforcement contact condition is not impermissibly vague.

Although ordinarily a defendant must object to a probation condition in the trial court in order to preserve the challenge for appellate review (see *People v. Welch* (1993) 5 Cal.4th 228, 234), where a condition is challenged as being unconstitutionally vague or overbroad on its face, an objection may be raised and considered for the first time on appeal (see *In re Sheena K.* (2007) 40 Cal.4th 875, 882 (*Sheena K.*)). This is because such challenges assert that the constitutional defect may be discerned from the language of the condition without resort to the facts in the record. (*Ibid.*) Cassandra's challenge to the law enforcement contact condition is a facial vagueness challenge and does not require us to consider the specifics of the record; we will therefore consider the challenge despite Cassandra's failure to object in the trial court.

"[T]he underpinning of a vagueness challenge is the due process concept of 'fair warning.' [Citation.] The rule of fair warning consists of 'the due process concepts of preventing arbitrary law enforcement and providing adequate notice to potential offenders' [citation], protections that are 'embodied in the due process clauses of the

federal and California Constitutions. (U.S. Const., Amends. V, XIV; Cal. Const., art. I, § 7).' [Citation.]" (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) "A probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,' if it is to withstand a challenge on the ground of vagueness." (*Ibid.*) However, probation conditions are given " ' "the meaning that would appear to a reasonable, objective reader." ' " (*In re I.V.* (2017) 11 Cal.App.5th 249, 261.)

Cassandra relies on *People v. Relkin* (2016) 6 Cal.App.5th 1188 (*Relkin*), in support of her argument that the law enforcement contact condition is unconstitutionally vague. The *Relkin* court considered a probation condition that required the defendant "to 'report to the probation officer, no later than the next working day, any arrests or any contacts with or incidents involving any peace officer.' " (*Id.* at p. 1196.) The defendant argued that the phrases " 'contacts with' and 'incidents involving' peace officers are uncertain because one cannot determine whether those terms include occasional conversation with a police officer who lives down the street, answering an officer's questions as a witness to a crime, or participation in a demonstration where officers are present." (*Id.* at pp. 1196–1197.) The defendant also contended that the condition suffered from vagueness "because it is subject to the ' "whim of any police or probation officer," ' and unconstitutionally infringes on [the defendant's] rights under the First Amendment of the United States Constitution." (*Id.* at p. 1197.)

The *Relkin* court determined that the condition was vague, but only in part. Specifically, the *Relkin* court concluded that "the portion of the condition requiring that

defendant report 'any contacts with . . . any peace officer' " was vague because it "does indeed leave one to guess what sorts of events and interactions qualify as reportable." (*Relkin, supra*, 6 Cal.App.5th at p. 1197.) According to the *Relkin* court, it was not certain that the condition would not be triggered "when defendant says 'hello' to a police officer or attends an event at which police officers are present, but would be triggered if defendant were interviewed as a witness to a crime or if his 'lifestyle were such that he is present when criminal activity occurs,' " as the People had argued on appeal. (*Ibid.*) "The language does not delineate between such occurrences and thus casts an excessively broad net over what would otherwise be activity not worthy of reporting." (*Ibid.*)

The People contend that the condition at issue in *Relkin* is distinguishable from the law enforcement contact condition at issue here. Specifically, the People assert that the condition imposed on Cassandra must be read "reasonabl[y] and practical[ly]" as "requiring her to report only those substantive contacts [with law enforcement], such as where she is a witness to a crime or asked to produce identification, and not incidental contacts, such as greeting an officer or attending an event where an officer is present." However, the condition imposed in this case is similar to the condition in *Relkin*, which required the reporting of "any contacts" with a law enforcement officer, in that the condition imposed on Cassandra requires her to report "all contacts" that she may have with any law enforcement officer. This condition does not provide any guidance that would allow Cassandra to know whether any particular contact would require reporting.

We agree with the court's conclusion in *Relkin, supra*, 6 Cal.App.5th 1188 that a condition that does not give a probationer sufficient notice as to which types of contacts

with law enforcement she is required to report must be modified. We will therefore remand the matter to the trial court to either clarify the scope of the condition or to strike it.

IV.

DISPOSITION

The case is remanded with directions to modify or strike the condition of probation requiring Cassandra to report all law enforcement contacts to her probation officer within three days in a manner that is consistent with the views expressed in this opinion. In all other respects, the adjudication and disposition orders are affirmed.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

DATO, J.